



## U.S. Department of Justice

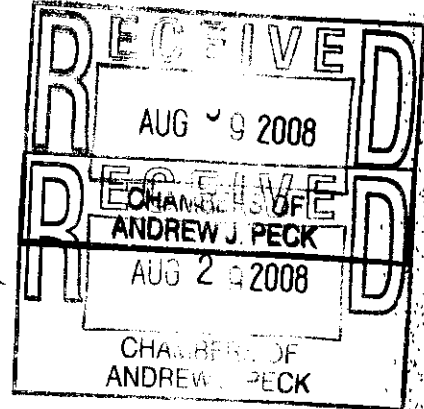
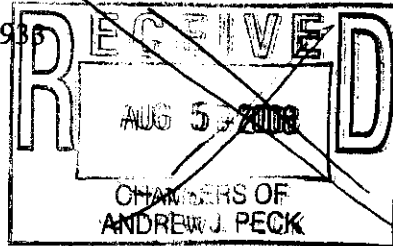
United States Attorney  
Southern District of New York

86 Chambers Street, Third Floor  
New York, New York 10007

August 28, 2008

**BY FACSIMILE:** (212) 805-7935

The Honorable Andrew J. Peck  
United States Magistrate Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, New York 10007-1312



Re: **Ebron v. United States of America**, 08 Civ. 0144 (AJP)

Dear Judge Peck:

This Office represents defendant United States ("the Government") in the above-captioned Federal Tort Claims Act action commenced by plaintiff Nicole Ebron. The parties are scheduled for a 1 to 1½-day bench trial before Your Honor on September 22, 2008.

Although the parties are prepared to proceed with the bench trial on September 22, one of the Government's fact witnesses, Carmen Foye, will not be available to testify that day due to a long-scheduled honeymoon from September 17 to October 9, 2008.

Because Ms. Foye is the only witness who is unavailable to testify on September 22, the Government respectfully requests an opportunity to re-open the trial on a day and time after October 9, 2008, for one hour of limited direct and cross-examination testimony from Ms. Foye. Plaintiff's counsel, Eric Popkin, consents to this request in principle, but has stated that he is not available to appear for another proceeding before Your Honor until the week of December 8, 2008. As an alternative to reopening the bench trial for one hour of live testimony, the Government respectfully requests that the Court grant it permission to take a videotaped deposition of Ms. Foye for use at trial on September 22.

**MEMO ENDORSED** - p2

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED

ED: \_\_\_\_\_

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC# \_\_\_\_\_  
DATE FILED: 9/2/08


Hon. Andrew J. Peck  
August 28, 2008

Page 2

We thank the Court for its consideration of this request.

Respectfully submitted,

MICHAEL J. GARCIA  
United States Attorney

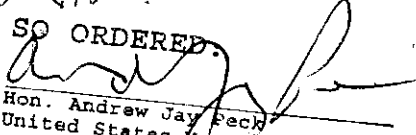
By:   
TOMOKO ONOZAWA  
SERRIN TURNER  
Assistant United States Attorneys  
Telephone: (212) 637-2721 (Onozawa)  
(212) 637-2701 (Turner)  
Facsimile: (212) 637-2686

cc: Eric Popkin, Esq.  
Fax: (212) 531-1116

## MEMO ENDORSED 9/2/08

1. TRIAL WAS SET ABOUT 2 MONTHS AGO. THE TRIAL DATE WILL NOT BE ADJOURNED NOR THE RECORD HERD OPEN. YOU MAY DO A VIDEO "DEPOSITION" TO PRESERVE HER TESTIMONY FOR TRIAL IF PLAINTIFF AGREES.
2. COUNSEL SHOULD CONTINUE EFFORTS TO SETTLE THIS CASE!

SO ORDERED.

  
Hon. Andrew Jay Peck  
United States Magistrate Judge

*My copy: [unclear]*  
*PEP*

**BY FAX**

DOCUMENT  
ONICA

**FACSIMILE COVER SHEET**

U.S. ATTORNEY'S OFFICE, SDNY  
86 Chambers Street, 3<sup>rd</sup> Floor  
NEW YORK, NY 10007

\*\*\*\*\*

From: **Tomoko Onozawa**  
**Assistant United States Attorney**

Office Phone No.: **(212) 637-2721**

Facsimile No.: **(212) 637-2686**

No. pages (including  
cover sheet): **3**

Date sent: **August 28, 2008**

\*\*\*\*\*

**"FOR OFFICIAL USE ONLY" U.S. ATTORNEY FACSIMILE  
COMMUNICATION**

The information contained in this facsimile message, and any and all accompanying documents, constitute "FOR OFFICIAL USE ONLY" information. This information is the property of the U.S. Attorney's Office. If you are not the intended recipient of this information, any disclosure, copying, distribution, or the taking of any action in reliance on this information is strictly prohibited. If you received this information in error, please notify us immediately by telephone at the above number and destroy the information.

\*\*\*\*\*

To: **Hon. Andrew J. Peck**  
**Fax No: 212-805-7933**

**Eric Popkin, Esq.**  
**Fax No. 212-531-1116**

Re: **Ebron v. U.S., 08 Civ. 144 (AJP)**

Memo: **Please see attached letter.**

\*\*\*\*\*